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ABSTRACT

In relatively recent months the U. S. Congress and the Georgia General Assembly have enacted comprehensive legislation that affects the placement of students in special education programs. The major concern of this article is the procedural safeguards in regard to student classifications. The major precedent-setting cases in the area of due process for exceptional children are reviewed, followed by a summary of the due process procedures enacted by the U. S. Congress and the Georgia General Assembly. (Author/MLF)

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PROCEDURAL DUE PROCESS REQUIRED FOR EXCEPTIONAL CHILDREN

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In relatively recent months the U. S. Congress and the Georgia General Assembly have enacted comprehensive legislation that affects the placement of students in special education programs. Each of the documents (P. L. 94-142 and Special Education Regulations and Procedures for Georgia) have sections that deal specifically with the due process procedures that must be carried out to place a child in a special education program. However, the lawmakers only enacted the legislation after extensive legal action had been taken by many parents throughout the United States. The courts were the torchbearers for the rights of exceptional children and the lawmakers have now decided to follow the examples set by the courts. This article will review the major precedent-setting cases in the area of due process for exceptional children, which will be followed by a summary of the due process procedures enacted by the U. S. Congress and the Georgia General Assembly.

The major concern of this article is the procedural safeguards in regard to student classifications. Kirp and Yudof (1974) made the following comment in regard to due process and student classification:

> Traditionally, procedural protection under the due process clause of the Fourteenth Amendment is provided to assure that official action is not arbitary, but rather consistent with general guidelines for ensuring fairness in governmental decisions. In the student classification context, such protection might minimize misapplication of the school's own criteria for placing students; it would require both clarity of standard and administrative regularity. The latter is required if due process is to be a reality. (p. 698)

Until the 1960's school systems generally placed students in special classes or special schools at the schools' own convenience. Parents were generally not consulted in regard to the placement after it had been finalized. Parents nor students were permitted substantial input into the placement procedures. However, during the 1960s the practice

of placing students in special classes and special schools without parental consultation was modified. The attitude change was primarily due to the courts rather than to action taken by lawmakers or educators.

The 1960's was a time in which people (especially minority groups) became concerned about their personal liberties. An often heard battle cry during that period was "due process." That cry was heard in the streets, the courts, and in the schools. Many parents concerned about the placement and non-placement of their children in certain school programs began to request and demand that they be consulted in regard to the education of their children.

When school administrators ignored the voices of concerned parents, the parents turned to the courts for help and in case after case the courts ruled in favor of parents with exceptional children. Schools were ordered to comply with the concept of due process when placing students in special programs.

Shotick (1976) made the following observation in regard to the current portion of the exceptional child in the wake of recent court rulings:

> With the rapid development of the concept of due process... a shift of considerable consequence ensued. Children and youth could not be singled out without a right to permission and/or review. Secondly, full detailed information had to be made patently clear. Now parents... must be informed of referral and steps and procedures in the evaluation process. (pp. 23-24)

The following paragraphs will review some of the more significant cases that pertain to the placement of students in educational programs. These cases and others have had major influence upon the due process procedures that were included in P. L. 94-142 and the Georgia state laws regulating education for handicapped students.

One of the first court cases to challenge a school's placement policy involved a medical student at the University of Vermont. In Connelly v. University of Vermont and State Agricultural College (1965), Connelly challenged the process by which he was dismissed from the medical school. The court ruled that the university should have given the student a fair and impartial hearing before he was dismissed.

Later in the 1960's a New York City student was suspended from school for disciplinary reasons. The student was granted a hearing; however, the parents requested to be represented by a lawyer. The New York Board of Education

denied the parents the use of a lawyer at the hearing and as a result of the hearing the student was removed from the regular classroom and placed in a school for socially maladjusted children. The parents appealed to the court and in Madera v. Board of Education (1967) the court ruled that the Board of Education acted improperly in denying the parents the use of a lawyer at the hearing. On an appeal to a higher court, the higher court ruled in Madera v. Board of Education (2nd Cir 1967) that the lower court had ruled improperly and overturned the lower court's ruling. The higher court ruled that the due process rights of the student had not been violated when the use of a lawyer had been denied.

In Hobson v. Hansen (1967) a number of black parents challenged the tracking system used in the Washington, D.C. school system. The court ruled that the tracking system deprived black students from an educational opportunity. This ruling was precedent-setting for requiring proper testing of students before being placed in special education classes. This ruling (along with Lemon v. Bossier Parish School Board (1971), Copeland v. School Board (1972), and Larry P. v. Riles (1972)) has determined that no single test can be used as a placement device. Rather, there must be a series of academic and psychological tests administered in order to determine appropriate placement of any student. It is essential that the tests and examinations used in making the placement be relevant, reliable, and free of discrimination.

In another case involving the Washinton, D.C. schools, a class action suit was filed in behalf of students who had been removed from classes without a hearing. In Mills v. Board of Education (1972) the judge ruled in favor of the plaintiffs and held that the students had been removed from the regular classroom in violation of their rights to due process. The judge specified that a hearing must be held before a student can be removed from the regular classroom and outlined the appropriate procedures to be taken during the hearing. In Lebanks v. Spears (1973) the judge also outlined the procedures to be taken during a hearing. These procedures were later used as guidelines for P. L. 94-142 and the Special Education Regulations and Procedures for Georgia.

The courts appear to have been concerned about the misplacement of students into special programs and their inability to return to the regular classroom. Singletary (1976) voiced a similar concern. He maintained that:

> A viable cause for concern with testing and placement is that once students are misplaced in special education... few ever "work their way out" into the regular education program. (p. 6)

Singletary (1976) pointed out another reason that courts

have given for demanding due process procedures and adequate and thorough testing before the placement of students in special programs:

> The subsequent placement process has been utilized by many school districts as "invidious" and "simple-minded" schemes to avoid desegregation. A concern is that too many special programs are becoming "black" programs, thus, unjustifiably hampering the blacks youth's opportunity for an appropriate educational experience while eliminating positions in the exceptional child program for "any" child who may actually need such instruction. (p. 6)

As the reader has probably already determined, the courts have played a major role in proclaiming that children must be granted due process before being placed into a special program. La Morte (1974) maintained that the courts' participation and "resultant decisions have revealed the judiciary to be a clear force, if not a dominant one in establishing educational policy" (p. 1).

Public Law 94-142 requires that all states have on file a written educational plan for each handicapped child (ages 3-21) by October 1, 1977 in order to be eligible for federal support and also in order to avoid possible litigation. According to P. L. 94-142 each state must establish a prescribed set of procedures which will insure that all handicapped children will receive an appropriate education. Subpart E refers specifically to the child's (or parents') "procedural safeguards" during referral, diagnosis, placement, and re-evaluation.

The following is a summary of the procedural safeguards listed in Subpart E of Public Law 94-142:

(1) The parents of a handicapped child shall have the opportunity to examine all relevant records with respect to the identification, evaluation, and placement of their child.

(2) The local educational agency shall inform the parents of a handicapped child that they have a right to an independent evaluation of their child.

(3) Parents must be notified in advance and in their native language of any changes to be made in regard to identification, placement, or evaluation of their child. The parents must sign a consent form before an educational agency can proceed.

(4) The parents of a handicapped child have the right to have a hearing in regard to the identification, evaluation, or placement of their child.

(5) During any hearing proceedings (or any appeal) the child must remain in the present placement until the hearing procedure has been completed.

(6) Any child placed in a special program is to be re-evaluated at least annually.

After the federal law was enacted the state of Georgia enacted legislation in order to comply with P. L. 94-142. In Georgia, special education is mandated as a result of the recent legislation rather than as a result of court rulings. The following list is a summary of the procedural safeguards listed in the Special Education Regulations and Procedures from the State Department of Education:

(1) The parents of a child must sign a consent form before any evaluation or placement procedures can take place.

(2) The parents of a child may be present at all placement meetings.

(3) The parents of a child may have independent evaluation data presented at placement meetings.

(4) The parents of a child may inspect all school records of their child that are pertinent to the child's placement in a special program.

(5) At any hearing related to the placement of a child into a special program, the parents may be represented by a lawyer.

In conclusion, a statement made by Singletary (1976) will be cited. He concluded that:

> The ultimate concern seems to be that exceptional children are provided an appropriate education commensurate with their needs, and that their parents should be kept fully informed on all procedures taken to provide that education. (pp. 10-11)

This was not the case before the courts came to the aid parents with children who were handicapped. After aid was received from the courts, the lawmakers came to the assistance of handicapped children and their parents. In the early 1960's due process was unheard of, but today school administrators and teachers must constantly remember that exceptional children must be granted their due process rights during evaluation and placement.

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